

**Letter of Findings: 01-20140656
Individual Income Tax
For the Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Although required to report his Indiana source income, expatriate provided sufficient specific documentary evidence to establish that he was not a resident of Indiana during 2011.

STATEMENT OF FACTS

I. Individual Income Tax - Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); IC § 9-24-1-1.5; IC § 9-24-1-1.5(b); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayer protests the assessment of individual income tax on the ground that he was not a resident of Indiana during 2011.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") issued Taxpayer a letter dated August 2014. The letter stated that, "Based on information reported to the Indiana Department of Revenue, we have determined that you have unreported income for tax year 2011." The letter went on to state that the Taxpayer was required to "file an Indiana return if you were an Indiana resident or had Indiana income and were required to file a federal income tax return."

In follow-up communication from the Department, Taxpayer was reminded that he possessed a then current Indiana Driver's license.

Taxpayer continued to disagree with the Department's finding that he was an Indiana resident and submitted a protest to that effect. An administrative hearing was scheduled but Taxpayer declined the opportunity to participate in the hearing or to designate someone to participate on his behalf. This Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

Taxpayer did not file a 2011 individual income tax return. The Department issued an assessment based on information available to the Department that Taxpayer was a resident of Indiana during 2011 and received taxable income during that year.

Taxpayer did not challenge the Department's assertion that he had Indiana source income during 2011 and was required to potentially file an Indiana return reporting that income.

However, Taxpayer does disagree with the Department's position that he was an Indiana resident during 2011.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person" IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. *Id.* 1317 (Internal citations omitted).

The Supreme Court concluded that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. *Id.* at 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the *Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. *Id.* Facts to be considered include:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance

- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile. Id.

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

Taxpayer states that he was a resident of Thailand during 2011. To that end, Taxpayer provided the following information:

- A notarized copy of Taxpayer's "non-immigrant visa;"
- A notarized copy of his Thai labor permit along with an English translation;
- A notarized copy of 2011 Thai Tax Year Return ("Thai year 2554") along with English translation.

The documents were notarized by a Thai attorney with a Thai address. The documents were forwarded to the Department postmarked with a Thai return address by means of Thai postage. The documents establish that taxpayer is employed at a "capital management" company in Bangkok and that his work permit allowed him to work for that company beginning January 2011.

Taxpayer explains that his Thai visa verifies that he was in the United States for 15 days during 2011.

Taxpayer addresses the issue raised by his possession of an Indiana driver's license during 2011.

I was never made aware that possession of an Indiana Driver's License gave me the liability to file an Indiana tax return. The only reason I retained a license was because my wife and I had difficulty renting a car to visit my family with Thai Driver Licenses (that are not in English).

As provided under IC § 9-24-1-1.5, Indiana's Bureau of Motor Vehicles is authorized to issue drivers' licenses to non-residents.

- This section does not present the bureau from issuing a licensee under this article to an individual who is:
- (1) Not required by this article to reside in Indiana to receive the licenses; and
 - (2) otherwise qualified to receive the license. IC § 9-24-1-1.5(b).

A review of the information available to the Department establishes that Taxpayer earned income from sources within the United States during 2011. During 2011, Taxpayer earned approximately \$2,500 from an Indiana investment fund. IC § 6-3-2-1(a) obligates Taxpayer to properly report that income to Indiana. However, Taxpayer does not challenge the Department's position on this issue.

Under IC § 6-8.1-5-1(c), Taxpayer has met his burden of establishing that he was not an Indiana resident during 2011. Taxpayer has no previous history of filing Indiana income taxes. Taxpayer's documentation establishes that he has both a longtime Thai residence and employment, and that he reported his income to the Thai tax authorities. Under the circumstances, his explanation that the Indiana address is merely a convenience for receiving mail is reasonable and credible. Apart from Taxpayer's modest investment income and the Indiana driver's licenses, there is no other evidence that establishes Taxpayer's domicile or residence in this state during 2011.

FINDING

Taxpayer's protest is sustained.

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